

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition for Declaratory Ruling Regarding	)	WC Docket No. 05-283
Self-Certification of IP-Originated VoIP	)	
Traffic	)	
	)	
Petition for Declaratory Ruling of Grande	)	
Communications, Inc.	)	

**COMMENTS OF THE NEBRASKA RURAL INDEPENDENT COMPANIES**

**I. Introduction**

The Nebraska Rural Independent Companies (the “Nebraska Companies”)<sup>1</sup> submit their comments in the above-captioned proceeding. With this Public Notice (“Notice”)<sup>2</sup> the Federal Communications Commission (“Commission”) seeks comment on a petition for declaratory ruling filed by Grande Communications, Inc. (“Grande”) regarding the treatment of traffic terminated through Grande to end users of interconnected local exchange carriers (“LECs”) in situations where Grande’s customers have certified that the traffic originated in Internet protocol (“IP”) format. Specifically, Grande seeks a declaratory ruling that: 1) an LEC may properly rely on a customer’s certification that the traffic being sent originates in IP format at the calling party’s

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<sup>1</sup> The Nebraska Companies submitting these collective comments include: Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telco, Inc., Consolidated Telecom, Inc., Consolidated Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Co., K. & M. Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Stanton Telecom, Inc., and Three River Telco.

<sup>2</sup> See Public Notice, *Pleading Cycle Established for Grande Communications’ Petition for Declaratory Ruling Regarding Intercarrier Compensation for IP-Originated Calls*, WC Docket No. 05-283, DA 05-2680 (rel. Oct. 12, 2005).

premises and therefore undergoes a net protocol conversion, or is otherwise enhanced, IP-enabled traffic; 2) an LEC may send such certified traffic to other terminating LECs over local interconnection trunks; and 3) terminating LECs receiving such traffic over local interconnection trunks are to treat that traffic as local traffic for intercarrier compensation purposes and may not access access charges for such traffic.<sup>3</sup>

The Nebraska Companies urge the Commission to deny Grande's requests. As Grande acknowledges, the Commission has not yet resolved the question of whether voice over IP ("VoIP") originated traffic should be categorized as an information service or a telecommunications service.<sup>4</sup> The Nebraska Companies believe that VoIP-originated traffic should be categorized as a telecommunications service and should be subject to access charges. Furthermore, the Commission has already opened a proceeding to address this question and other issues related to IP-enabled services.<sup>5</sup> Such an important issue should be addressed in a comprehensive fashion through a rulemaking proceeding, instead of addressing the question in a piecemeal fashion through a declaratory ruling.

## **II. VoIP-Originated Traffic Is A Telecommunications Service And Should Be Subject To Access Charges.**

Grande asserts that the traffic it terminates for interexchange carriers ("IXCs"), enhanced service providers ("ESPs"), and other carriers should be treated as local traffic. Grande argues that the traffic subject to its petition originates as IP telephony traffic and undergoes a net protocol conversion, and is thus enhanced or information services

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<sup>3</sup> Id. at p. 1.

<sup>4</sup> See Petition for Declaratory Ruling of Grande Communications, Inc. Regarding Self-Certification of IP-Originated VoIP Traffic (*"Grande Petition"*) (filed Oct. 3, 2005) at p. 6.

<sup>5</sup> See *IP-Enabled Services*, WC Docket No. 04-36, FCC 04-28 (*"IP-Enabled NPRM"*) (rel. Mar. 10, 2004) at ¶¶ 61-62.

traffic.<sup>6</sup> However, the Nebraska Companies believe that merely because traffic originates in IP format and terminates in another format does not meet the test of net protocol conversion. Therefore, the terminating traffic that is the subject of the Grande Petition is telecommunications traffic, not enhanced or information services traffic, and as such, is subject to access charges.

As the Nebraska Companies recommended in their comments responding to the *IP-Enabled NPRM*, the “layered” model is the most appropriate method of determining whether a service is a telecommunications or information service and the associated regulation to which that service should be subject. The OSI model was developed by the International Organization for Standardization (“ISO”) to help vendors create interoperable network implementations, in order to help move information between computers of diverse design. As such, it groups similar network functions into layers, the functions of which can be universally understood based on the model. The Nebraska Companies believe that layers 1-5 of the OSI reference model respectively (the physical, data link, network, transport, and session layers) are necessarily associated, by their nature, with the provision of transmission and are telecommunications and should be subject to appropriate regulatory oversight. This is because the definition of telecommunications includes “. . . transmission, between or among points specified by the user, of information. . . .”<sup>7</sup> and layers 1-5 are used to facilitate the transmission of information.

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<sup>6</sup> See *Grande Petition* at pp. 7 and 9.

<sup>7</sup> See 47 U.S.C. § 153(43).

While the “layered” approach can be used to determine whether a service is a telecommunications or information service, the Nebraska Companies believe that the “Change in Form or Content Test” is being inappropriately applied in distinguishing telecommunications from information services whenever there is an association with IP protocol. The statutory intent of the change in form and content test was to discriminate between functions and services that are clearly data processing in their own right and functions that are integral to the transmission of information over distance. Clearly, all telecommunications systems entail some change in form. For example, even the original analog telecommunications call pattern involved a change in form. Initially, the call began as an acoustic wave that was then converted to an electrical analog wave for transmission. After traversing the PSTN and arriving at its destination, the call was converted back to an acoustic wave.

The “Change in Form or Content Test” should be applied carefully to ensure that it is consistent with statutory intent. The test must, at minimum, be conducted from the perspective of the form or content sent and received by the end users. For example, a call that originates as voice and terminates as voice is not a net change in form or content.<sup>8</sup>

Grande asserts that its customers (IXCs, ESPs and other carriers) originate traffic in IP format that is converted to Time Division Multiplexed (“TDM”) format for termination through Grande.<sup>9</sup> This same end-point net change in protocol test, as illustrated in the *AT&T IP Telephony Order*, suggests that Grande is incorrect in arguing

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<sup>8</sup> See *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, FCC 04-97 (“*AT&T IP Telephony Order*”) (rel. Apr. 21, 2004) at ¶¶ 12-13.

<sup>9</sup> See *Grande Petition* at p. 7.

that the VoIP traffic it terminates for carriers is an information service because it enters the network in an IP format and terminates in a different format. The *AT&T IP Telephony Order* said that AT&T provides telecommunications services because it provides “transmission between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent or received.”<sup>10</sup>

By looking at VoIP calls, we can clearly see there is not a net change in form or content. A customer who places a VoIP call typically picks up a phone and makes his/her caller input in the form of dialing digits and analog voice communication. When the called party answers his/her phone on the other end, he/she receives a ring signal and the analog voice communication just as initiated by the caller. The caller chooses to transmit a voice call, not a packet stream or a TDM sequence. IP and TDM merely operate in the background to transport the identical analog voice streams between two points. Thus, the correct application of the net change in form or content test, from the perspective of the end user, would indicate that the VoIP service which is terminated by Grande does not change the form or content of the information transmitted. Therefore, VoIP services such as those terminated by Grande are telecommunications services, not information services, and are thus subject to access charges.

Additionally, Grande has not accurately portrayed the Commission’s current pronouncements regarding the treatment of IP-originated traffic. Grande accurately indicates that in the Commission’s 1998 Report to Congress on Universal Service, the Commission did not reach a definitive conclusion regarding the regulatory classification

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<sup>10</sup> See *AT&T IP Telephony Order*, at ¶ 12.

of any type of IP telephony as an information or telecommunications service.<sup>11</sup> Grande also correctly notes that the Commission has opened a rulemaking proceeding to examine the regulation of IP-enabled services, including whether VoIP or other IP-enabled services are subject to access charges.<sup>12</sup> However, the *Grande Petition* uses an older statement of Commission policy towards VoIP services which states “IP telephony [is] generally exempt from access charges. . . .” instead of recognizing the most recent policy statement of the Commission made in the *IP-Enabled NPRM*.<sup>13</sup> In the *IP-Enabled NPRM*, the Commission stated “[a]s a policy matter, we believe that any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network.”<sup>14</sup> Since VoIP traffic such as that addressed in the *AT&T IP Telephony Order* is subject to access charges, the Nebraska Companies believe that the Commission’s policy pronouncement that traffic sent to the PSTN should be subject to similar compensation obligations, regardless of the type of network on which it originates, means that IP-originated traffic such as that terminated by Grande should be subject to access charges.

### **III. The Issues Raised By Grande Should Be Addressed Through Rulemaking Proceedings That Are Currently Open, And Should Not Be Decided In A Piecemeal Fashion Through A Declaratory Ruling.**

The Nebraska Companies believe that issues such as those raised in the *Grande Petition* should be addressed in a comprehensive rulemaking proceeding, as a ruling on this petition would affect not only the LECs with which Grande interconnects, but would

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<sup>11</sup> See *Grande Petition* at p. 14.

<sup>12</sup> *Id.* at p. 15.

<sup>13</sup> *Id.* The statement cited by Grande is from April 2001.

<sup>14</sup> See *IP-Enabled NPRM* at ¶ 61. The *IP-Enabled NPRM* was released in March 2004.

affect LECs nationwide as other carriers might seek to implement a self-certification strategy that the traffic they are delivering is enhanced services traffic entitled to be terminated as local traffic. The Commission currently has a rulemaking open on the issue of the proper regulation of IP-Enabled services, as Grande indicates.<sup>15</sup> Furthermore, the Commission also has a rulemaking open regarding intercarrier compensation, and sought comments on a variety of intercarrier compensation issues earlier this year.<sup>16</sup> These proceedings will allow the Commission to consider issues such as whether IP-originated traffic is subject to access charges in a comprehensive, instead of piecemeal, fashion.

A representative of the Commission's Wireline Competition Bureau has indicated that the Bureau will address intercarrier compensation issues in the coming months.<sup>17</sup> Therefore, the Nebraska Companies believe the Commission should deny the *Grande Petition* and address the issues raised by the Grande Petition within the open proceedings identified above.

#### **IV. Conclusion**

The Nebraska Companies urge the Commission to deny the *Grande Petition*. The issues raised in the petition should be addressed in a comprehensive fashion in open rulemaking proceedings. Furthermore, the Nebraska Companies believe that IP-originated traffic that is terminated on the PSTN is telecommunications traffic, not enhanced or information services traffic, and as such should be subject to access charges.

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<sup>15</sup> Id.

<sup>16</sup> See *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, FCC 05-33 (rel. March 3, 2005).

<sup>17</sup> See Washington Watch, November 15, 2005, available at <http://www.neca.org/wawatch/wwpdf/ww111505.pdf>.

Dated: December 12, 2005.

Respectfully submitted,

**The Nebraska Rural Independent Companies**

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The Blair Telephone Company,  
Cambridge Telephone Company,  
Clarks Telecommunications Co.,  
Consolidated Telco, Inc.,  
Consolidated Telecom, Inc.,  
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Eastern Nebraska Telephone Company,  
Great Plains Communications, Inc.,  
Hartington Telecommunications Co., Inc.,  
Hershey Cooperative Telephone Co.,  
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